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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 794.

THE UNITED STATES, APPELLANT,

vs.

IRVING F. WILCOX.

APPEAL FROM THE COURT OF CLAIMS.

FILED OCTOBER 3, 1877.

Ex
Dec 22 1877
Argued
Jan 8 1878

SUPREME COURT OF THE UNITED STATES.

No. 794.

THE UNITED STATES, APPELLANT,

vs.

IRVING F. WILCOX.

APPEAL FROM THE COURT OF CLAIMS.

INDEX.

	Original.	Print.
I. Original petition	1	1
II. Traverse	5	3
III. Findings of fact and conclusions of law	6	4
IV. Opinion of the court	8	5
V. Final judgment	12	8
VI. Application for allowance of appeal, and order allowing the same	13	8
VII. Certificate	14	9

1 Court of Claims, December term, 1873.

IRVING F. WILCOX
vs.
THE UNITED STATES. } No. 9865.

I. *Petition.—Filed Sept.* 26, 1874.

To the honorable judges of this court:

Your petitioner respectfully shows, that he was appointed collector of internal revenue for the fifth collection district of Virginia, and that he entered upon the discharge of his duties the day of April, A. D. 1869, and continued in said office up to and including the 10th day of March, A. D. 1871.

That during said period there was transported from his district to other collection districts and accounted for under the provisions of section 74 of "An act imposing taxes on distilled spirits and tobacco, and for other purposes," approved July 20, 1868, and the regulations issued thereunder, tobacco, the tax on which amounted, during April, 1869, to $15,979.20; May, 1869, $111,991.94; June, 1869, $54,615; total for fiscal year ending June 30, 1869, $182,586.18. In July, 1869, $71,528.48; August, 1869, $103,491.84; September, 1869, $172,607.36; October, 1869, $80,996.48; November, 1869, $77,803.36; December, 1869, $59,588.48; January, 1870, $26,203.36; February, 1870, $34,727.36; March, 1870, $26,092.16; April, 1870, $15,810.56; May, 1870, $63,534.40; June, 1870, $109,543.68; July, 1870, $201,322.40; August, 1870, $196,028.80; September, 1870, $163,554.56; October, 1870, $120,843.68; November, 1870, $90,321.92; December, 1870, $37,427.52; January, 1871, $32,065.92; February, 1871, $13,678.08; March, 1871, $4,323.84. Total during term of office, $1,884,080.42.

That the proviso to section 24 of "An act entitled an act to provide internal revenue to support the Government, to pay interest on the public debt, and for other purposes," approved June 30, 1864, as amended by section 9, act July 13, 1866, and section 9, act March 2, 1867, was as
2 follows, viz: "Provided, that in calculating the commissions of assessors and collectors of internal revenue in districts whence cotton or distilled spirits or other articles are shipped in bond to be sold in another district, one-half the amount of tax received on the quantity of cotton or spirits or other articles so shipped shall be added to the amount on which the commissions of such assessors and collectors are calculated, and a corresponding amount shall be deducted from the amount on which the commissions of the assessors and collectors of the districts to which such cotton or spirits or other articles are shipped are calculated."

That under said proviso he claims that he is entitled to commissions, under section 25 of said act of June 30, 1864, as amended by section 1 of the act of March 3, 1865, as follows, viz:

For the part of the fiscal year ending June 30, 1869, his collections were	$151,134 08
Tax on half bonded tobacco received by other collectors	91,293 09
Total amount on which commissions are due	$242,427 17

Commissions on above:	
$19,230.76, at 3 per cent	$576 92
57,692.28, at 1 per cent	576 92
115,384.56, at ½ per cent	576 92
50,119.57, at ⅛ per cent	62 65
Total $242,427.17	$1,793 41
Allowed per Fifth Auditor's report 3128	1,524 89
Amount due	$268 52
Fiscal year ending June 30, 1870, collections	$1,433,081 39
Tax on half bonded tobacco received by other collectors	420,963 76
Total	$1,854,054 15
Commissions on above:	
$100,000.00, at 3 per cent	$3,000 00
300,000.00, at 1 per cent	3,000 00
3 600,000.00, at ½ per cent	3,000 00
854,045.15, at ⅛ per cent	1,067 56
	$10,067 56
Amount allowed per Fifth Auditor's reports 3280, 3478, 3659, 4007	9,541 35
Amount due claimant	$526 21
Balance of term of office ending March 10, 1871. Collections	$1,167,449 79
Tax on halt bonded tobacco received by other collectors.	429,783 36
	$1,597,233 15
Commissions due on above:	
$69,166.66, at 3 per cent	$2,075 00
207,499.98, at 1 per cent	2,075 00
414,999.96, at ½ per cent	2,075 00
905,566.55, at ⅛ per cent	1,131 96
	$7,356 96
Amount allowed per report 4655	6,819 73
Amount due	$537 23
Total amount due for term of office, not yet paid	$1,331 96

That by the regulations of the Commissioner of Internal Revenue, issued August 1, 1868, series 4, No. 8, when tobacco shipped in bond was received at the export bonded warehouse, the bond given to the shipping collector was canceled, and no report was ever made to him of the final disposition of said tobacco, so that he never was able to tell what part was tax-paid and what part was exported, all such knowledge being entirely withheld from him; that he believes that of all the tobacco shipped from his district a very small part, if any, was exported, but it was all, as claimant believes, tax-paid.

That your petitioner, on the 4th day of April, 1874, asked the Commissioner of Internal Revenue for a statement of the amounts
4 paid on the tobacco shipped in bond, but was answered that the information could not be obtained from the records of the Department.

On the 2d day of February, A. D. 1872, the Commissioner of Internal Revenue decided, in a letter to J. H. Rives, the then collector for said fifth district of Virginia, that no commissions were due on tobacco shipped in bond. On the 8th day of February, 1872, claimant, by his attorney, took an appeal from this decision to the accounting-officers of the Treasury, but from that time to the present has been totally unable to get any decision on his case. Your petitioner claims that he is entitled to the commissions as aforenamed on one-half of all the tax on the tobacco shipped in bond during his term of office.

And your petitioner further shows that no person is owner of or interested in this claim excepting himself.

That he has at all times borne true allegiance to the United States Government, that he is a citizen thereof, and that he has not in any way voluntarily aided or abetted or given encouragement to the rebellion against the Government of the United States.

Therefore your petitioner prays this court to give him judgment for $1,331.96; and your petitioner will ever pray.

IRVING F. WILCOX,
By I. G. KIMBALL,
Attorney.

STATE OF OHIO,
County of Portage:

Irving F. Wilcox, claimant in the above petition, being duly sworn, deposes and says that no assignment or transfer of said claim, or any part thereof or interest therein, has been made, except as in said petition stated; that said claimant is justly entitled to the amount therein claimed from the United States, after allowing all just credits and offsets; and that he believes the facts as stated in said petition are true.

IRVING F. WILCOX.

Subscribed and sworn to before me this 24th day of September, 1874.
[SEAL.]
JOHN MAHONY,
Clerk Court of Common Pleas.

5 II. *Traverse.—Filed Dec.* 9, 1874.

And now comes the Attorney-General, on behalf of the United States, and makes answer to the petition of the claimant herein; and, not confessing the same, or any part thereof, denies each and every the allegations therein contained, and calls for strict proof of the same.

And as to so much of the said petition as sets forth and avers that the United States are indebted to the said claimant in the sum of one thousand three hundred and thirty-one dollars and ninety-six cents, says that they are not indebted to the said claimant in the said sum of money, nor any part thereof.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and never voluntarily aided, abetted, or given encouragement to rebellion against the said Government, denies the said allegation.

JOHN GOFORTH,
Assistant Attorney-General.

6 III. *Findings of fact and conclusions of law.*

This case having been heard before the Court of Claims, the court, upon the evidence, finds the facts to be as follows:

I. Under the provisions of the act of July 20, 1868, chap. 186, sec. 73, (15 Stat. at Large, 157,) the Commissioner of Internal Revenue designated and established at different ports of entry bonded warehouses for the storage of manufactured tobacco and snuff in bond intended for exportation, under the control of the collector of internal revenue in charge of exports at the port and in the district where located.

II. The Commissioner promulgated the following instructions and regulations applicable to the withdrawal of tobacco from said warehouses for consumption, so far as material in this case:

"The law makes no provision for the removal of tobacco in bond without payment of tax, except such tobacco and snuff as are intended for export. * * *

"Section 73 [of the act of 1868, chapter 186] provides * * that said goods may be withdrawn from warehouses either for immediate export to a foreign country, or after the tax has been paid thereon. * *

"The following rules and regulations are prescribed for the deposit in, and the withdrawal from, any export bonded warehouse of * * manufactured tobacco and snuff. * * * * * *

"IV. WITHDRAWAL AFTER PAYMENT OF TAX.

"The party desiring to withdraw manufactured tobacco or snuff from an export bonded warehouse after the tax has been paid thereon will file with the collector an entry for withdrawal in the following form, describing the goods as they were entered for warehousing, viz:

"ENTRY FOR WITHDRAWAL.

"Entry of merchandise intended to be withdrawn from the export bonded warehouse of , at , in the district of the State of , by , for consumption, on payment of the taxes, the same having been stored in said warehouse by , on the day of , 18 , and which were described as follows, viz:

* * * * * * *

"The taxes having been fully paid and the stamps affixed and cancelled, the collector will issue a permit for the delivery of the goods, which permit must be presented to the assessor of the district for his certificate that the same has been presented to him, and that the amount of taxes paid thereon has been entered in his bonded account of the district."

And the collector was required to certify that the full amount of tax due and owing thereon had been paid to him.

III. The claimant was collector of internal revenue for the fifth collection district of Virginia from April, 1869, to March, 1871, as alleged in his petition.

7 IV. During the time the claimant was collector as aforesaid there were removed from manufactories in his district, without the payment of tax thereon, and transported directly to export-warehouses in other districts, under the provisions of section 74 of said act (15 Stat., 157) and the regulations of the Commissioner, a large quantity of manufactured tobacco, to each package of which was affixed, by said collector, an engraved stamp, as required by said section.

V. Of the tobacco so removed from manufactories in the district of the claimant, and shipped to export bonded warehouses in other districts, there was withdrawn by the owners from said warehouses, to be sold in districts other than that of the claimant, and not for export, in accordance with the regulations of the Commissioner mentioned in the second finding, a large quantity of tobacco, and the tax thereon was paid to the collectors in the districts where said warehouses were situated.

VI. Adding one-half the amount of the tax received on the quantity of tobacco shipped from the claimant's district, as set forth in the fourth finding, and withdrawn from the warehouses in other districts to be sold, as stated in the fifth finding, to the amount of taxes collected by the claimant on which his commissions were calculated, if he was entitled to have such addition made under the provisions of the act of June 30, 1864, chap. 173, § 25, (13 Stat., 231,) as amended by the act of July 13, 1866, chap. 184, § 9, (14 Stat., 106,) and the act of March 2, 1867, chap. 169, § 9, (14 Stat., 171,) the claimant would be entitled to additional commissions amounting to the sum of $1,020, which has not been paid to him.

Conclusion of law: That the claimant is entitled to recover the sum of $1,020, for reasons stated in the opinion of the court.

By the court.

8 IV. *Opinion of the court.*

RICHARDSON, J., delivered the opinion of the court:

The only question of law arising upon the findings in this case is, which of two collectors of internal revenue is entitled to commissions on one-half the tax collected on manufactured tobacco removed and transported without the payment of tax from the manufactories in one district to export bonded warehouses in another district, and withdrawn for consumption or sale upon payment of the taxes thereon to the collector of the latter district, as the law stood after the act of July 20, 1868, and before the passage of the act of June 6, 1872; there being no controversy as to who was entitled to commissions on the other half which were allowed to the collector in the warehouse-district.

By the act of June 30, 1864, chapter 173, §§ 61, 90, (13 Stat. at Large, 245, 263,) manufactured tobacco and other articles might "be transferred without payment of duty directly from the place of manufacture to a bonded warehouse established in conformity with law and Treasury regulations, under such rules and regulations and upon the execution of such transportation bonds as the Secretary of the Treasury may prescribe, * * * and withdrawn therefrom for consumption on payment of the duty, or removed for export to a foreign country without payment of duty." * *

Under this act the Commissioner made regulations, among others, for the withdrawal of tobacco, as well as spirits and other articles to which the same act applied, from the bonded warehouses for consumption, requiring the taxes due thereon to be paid to the collector of the district in which the warehouses were situated.

9 The same acts in section 25, (13 Stat., 231,) allowed to collectors of internal revenue a salary and certain commissions on the amount of money collected, paid over, and accounted for by them respectively as taxes.

This gave to collectors in the districts where bonded warehouses were established all the commissions on taxes collected on manufactured

tobacco, as well as spirits and other articles withdrawn from said warehouses for consumption, and nothing to the collectors of the districts in which the tobacco had been manufactured and from which it had been shipped.

Subsequently, by the act of July 13, 1866, chap. 184, § 9, (14 Stat, 105, 106,) as amended by the act of March 2, 1867, chap. 169, § 2, (14 Stat., 473,) the following proviso was enacted:

"Provided, that in calculating the commissions of assessors and collectors of internal revenue in districts whence cotton or distilled spirits or other articles are shipped in bond to be sold in another district, one-half of the amount of tax received on the quantity of cotton or spirits, or other articles so shipped, shall be added to the amount on which the commissions of such assessors and collectors are calculated."

Under this provision the commissions on spirits, tobacco, and other articles manufactured in one collection district and shipped in bond for consumption or to be sold in another district and the tax paid there, were divided equally between the collectors of the two districts, or, more strictly speaking, one-half of the amount of taxes received in such cases was added to the respective accounts of such collectors, for the purpose of calculating their commissions, which might be of different percentage, according to the full amount of all their collections.

The act of July 20, 1868, chap. 186, §§ 73, 74, (15 Stat., 157,) made new provisions in relation to the removal of manufactured tobacco and snuff from the manufactories, directing the Commissioner to designate and establish at different ports of entry bonded warehouses for the storage of manufactured tobacco and snuff in bond intended for exportation, and requiring all such articles intended for export, and removed to another district for that purpose, to be transported to such export bonded warehouses, and also prohibiting the removal of the same from such warehouses except for export "or after the tax has been paid thereon."

The Commissioner of Internal Revenue construed these provisions as superseding those of previous acts, and as prescribing the only method by which manufactured tobacco could be taken from the manufactory without the payment of tax and transported to bonded warehouses in other districts, but as still giving the owner the right to remove it from those warehouses for consumption upon paying the tax thereon to the collector in the district where it was stored, substantially in the same manner as it could have been removed under the former acts; and he made his regulations and instructions accordingly.

The only practical changes made by the law of 1868 in relation to the removal of manufactured tobacco from the district where manufactured to other districts where there were bonded warehouses, and the removal therefrom for sale or consumption, were these: it substituted export bonded warehouses for internal-revenue bonded warehouses, and required the manufacturer to affix to each package before leaving the manufactory a stamp indicating that the tobacco was intended for export. The method of transfer, giving bond, removal for sale or consumption, and payment of tax upon such removal, were substantially the same under both laws.

For the defendants, in behalf of the collectors in the warehouse districts, it is contended that as the proviso in the act of 1866 which we have cited as amended, specified only "articles shipped in bond to be sold in another district," therefore after the passage of the act of 1868 superseding the then existing provisions for the shipment of tobacco in bond to be sold in another district, and substituting

therefor provisions for the shipment only upon the declared intention of the owner that it was for export, as evidenced by a stamp thereon, there could be nothing for the proviso to operate upon, and that the taxes collected by a collector in the district where export bonded warehouses were situated upon tobacco shipped thereto from manufactories in other districts, with stamps on the packages indicating that it was intended for export, and withdrawn for sale or consumption, were not taxes "on articles shipped to be sold in another district."

In our opinion this would be a too restricted application of the proviso, or a too extensive application of the effect of the act of 1868, beyond the intention of Congress, and outside of the matters designed to be covered or affected by that act.

In the construction of several statutes on the same general subject, passed at different dates and by successive legislatures, without express repeal of former provisions, all parts of each must retain their force and effect except where it is apparent that by the later acts substantial changes were intended, without relying upon artistic adaptation of the language of all parts to the substantial alterations, or raising incidental changes through imperfect or incomplete connections between the different statutes, clearly not contemplated by the legislators, and not within the scope of the particular matters considered by them. What is to be determined is the will of the legislature, and that will as expressed in the latest act is paramount. But on all matters in which the will of the latest legislature has not been clearly manifested, that of all former legislatures must stand.

When the proviso which we have cited was passed, in 1866, and amended in 1867, so as to include other articles as well as cotton and distilled spirits, the Thirty-ninth Congress had before it and directly considered and acted upon the question of compensation of assessors and collectors of internal revenue, and in explicit language declared its policy and will as to which of two collectors should have the commission upon taxes collected on distilled spirits, and other articles manufactured in one district and sent in bond to another district, there stored in bonded warehouses, and withdrawn therefrom on the payment of the taxes to the collector of the latter district.

That Congress provided that the commission should practically be divided between the collectors, allowing one-half the tax paid to be added to the collection account of each for the purpose of calculating their commission. The language of the proviso as to articles the tax paid on which was thus to be divided in the collectors' accounts, in specifying them as "articles shipped in bond to be sold in another district," was sufficiently definite and appropriate in the then state of the law in relation to tobacco manufactured in one district and transported into another district, and there withdrawn upon payment of tax for sale or consumption.

In 1868 the Fortieth Congress passed the act of July 20, (ch. 186,) a long act of 109 sections, in no part of which was the subject of the compensation of assessors of internal revenue dealt with or referred to. It did establish a change of policy as to the transfer in bond of tobacco and snuff from the manufactory to bonded warehouses within or without the same district, but that change had no practical effect upon the right or the method of withdrawal of the tobacco from the bonded
11 warehouses upon payment of the tax to the collectors of the districts where such warehouses were situated, nor upon the respective labors, responsibilities, and duties of the several collectors in the different districts, and the regulations of the Commissioner in relation

to the withdrawal and payment of taxes on tobacco in such cases were practically thesame under this as under the pre-existing acts.

The only real changes effected were, as we have before shown, the substitution of export bonded warehouses for internal bonded warehouses, and requiring the owners of tobacco shipped from the manufactory to the warehouses to affix to each package an engraved stamp, for which he paid to the Government through the collector of the shipping-district 25 cents, and which was to be indicative of the owner's intention to export the package. But, notwithstanding that stamp, the owner was not bound to export the tobacco, but was permitted to withdraw it from bond for consumption on payment of the taxes due thereon precisely as before.

And it is upon this narrow construction that the defense in this case rests; that because under the act of 1868 tobacco could be shipped in bond from the manufactory only with a stamp thereon indicative of the intention of the owner to export it, while the language of the proviso of 1866 referred to articles "shipped in bond to be sold in another district," therefore the commissions of collectors were to be calculated on a different basis in the two cases, upon taxes collected in like manner upon tobacco shipped in bond from the manufactory and withdrawn for consumption from the bonded warehouse alike under both acts.

In our opinion the Fortieth Congress, in passing the act of 1868, (chap. 186,) had no such intention and expressed no such will; and to adopt the construction contended for by the defendants would be to defeat the clearly established policy of Congress in this particular, by giving substantial force to language not material to the subject-matter legislated upon, and by establishing an incidental and accidental change of the law beyond the contemplation of the legislators.

We are confirmed in this opinion by the fact that, in revising the Statutes in 1873, the same construction we now give was adopted by Congress, and in incorporating the substance of the proviso of 1866 and 1867 into the revision, the words "to be sold in another district," upon which alone the defense in this case finds any support, were omitted. (Revised Statutes, § 3145.) The Fortieth Congress, in 1868, no more intended, apparently, to change the law as to the force, application, and effect of that proviso than did the Forty-third Congress in 1873, and it would seem to have been the will of each that the policy of the Thirty-ninth Congress, as declared in the proviso in relation to the compensation of collectors and assessors of internal revenue, should continue.

The judgment of the court is that the claimant have and recover the sum of $1,020.

12 V. *Final judgment.*

At a Court of Claims, held at the Capitol, in the city of Washington, on the eleventh day of June, A. D. 1877, judgment was ordered to be entered up as follows:

The court, upon due consideration of the premises, find in favor of the claimant, and do order, adjudge, and decree that the said Irving F. Wilcox, claimant, do have and recover of and from the United States the sum of one thousand and twenty dollars, ($1,020.$\frac{00}{100}$.)

By the court.

3 VI. *Application for allowance of appeal and order allowing the same.*

From the judgment rendered in the above-entitled cause on June 11, 1877, in favor of claimant, the defendants, by their Attorney-General,

on the 4th day of September, 1877, make application for and give notice of an appeal to the Supreme Court of the United States.

THOMAS SIMONS,
Ass't Attorney-General.

Filed Sept. 4, 1877.

AT CHAMBERS, *Sept.* 4, 1877.

Allowed.

C. D. DRAKE,
Chief-Justice.

14 In the Court of Claims.

IRVING F. WILCOX
vs.
THE UNITED STATES. } No. 9865.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause and the final judgment of the court thereon, of the application of the Attorney-General for the defendants for the allowance of an appeal, as filed in the clerk's office September 4, 1877, and of the order of the chief-justice of said court allowing the same, of the findings of fact by the court and the conclusion of law thereon, and of the opinion of the court.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Washington, this twenty-seventh day of September, A. D. 1877.

[SEAL.]

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

(Indorsement on cover:) No. 794. The United States, appellant, vs. Irving F. Wilcox. Court of Claims. Filed 3rd October, 1877.

In the Supreme Court of the United States.

OCTOBER TERM, 1877.

THE UNITED STATES, APPELLANTS,
vs.
IRVING F. WILCOX. } No. 794.

APPEAL FROM THE COURT OF CLAIMS.

Brief for the United States.

In the Supreme Court of the United States.

OCTOBER TERM, 1877.

THE UNITED STATES, APPELLANTS,
vs.
IRVING F. WILCOX. } No. 794.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

The question raised by this claim is, whether, under the law as it stood from June 30, 1869, to March 10, 1871, the collector of internal revenue for the district in which tobacco, &c., was *manufactured* was entitled to share with the collector for the district in which such article was *sold*—in the *commissions* upon the taxes paid thereupon, or, whether such commissions belonged to the latter collector alone.

This question turns, of course, upon the meaning of the *statutes* upon the subject, which stand thus:

1. The act of 1864, ch. 173, sec. 25, (13 Stats., 231,) provides a certain salary for collectors, adding thereto commissions, according to a *sliding scale*, "upon the amounts by them respectively collected and paid over."

2. Thereupon the act of 1866, ch. 184, sec. 9, (14 Stats., 106, top,) provided, "That in calculating the commissions of assessors and collectors of internal revenue in districts whence cotton or distilled spirits ['or other articles;' see act of 1867, ch. 169, sec. 9, 14 Stats., 473, third paragraph from bottom] are shipped in bond to be sold in another district, one half the amount of tax on the quantity of spirits [or other articles] so shipped shall be added to the amount on which the commissions of such assessors and collectors are calculated, and a corresponding amount shall be deducted from the amount on which the commissions of the assessors and collectors of the districts to which such cotton or spirits [or other articles] are shipped are calculated."

3. Finally, the act of 1868, ch. 186, sec. 73, (15 Stats., 157,) after providing for establishing at ports of entry bonded warehouses for the storage of manufactured tobacco and snuff in bond *intended for exportation*, &c., enacted as follows: "No manufactured tobacco or snuff shall be withdrawn or removed from any bonded warehouse without an order or permit from the collector in charge of exports at such port, which shall be issued only for the immediate transfer to a vessel by which such tobacco or snuff is to be exported to a foreign country, as hereinafter provided, *or after the tax has been paid thereon.*"

It is understood that "the Commissioner of Internal Revenue *construed these provisions as superseding those of previous acts, and as prescribing the only method by which manufactured tobacco could be taken from the manufactory without the payment of tax, and transported to bonded warehouses in other districts*, but as still giving the owner the right to remove it from those warehouses for consumption, upon paying the tax thereon to the collector in the

district where it was stored, substantially in the same manner as it could have been removed under the former acts; and he made his regulations and instructions accordingly." (See Opinion of the court below, Record, p. 6, middle.)

The short point here is, whether tobacco shipped from district A to a bonded warehouse in district B *for exportation*, within the words of the above act of 1868, which was afterward withdrawn therefrom and sold within district B, can properly be held to have been "*shipped in bond to be sold*" in district B, within the meaning of the words quoted, which are those that give the only title that can be set up for the claimant.

Technically, such tobacco is *always* shipped from district A "*for export*," as the stamp thereupon required by section 74 of the act of 1868, ch. 186, (15 Stats., 157, bottom,) must upon its face declare; and, *in point of fact*, this must *frequently* be the truth of the matter, such intention being in those cases subsequently *changed*, and the article withdrawn and sold.

Granting, then, that under the regulations above referred to all tobacco removed from district A *for the purpose* of being sold in district B, is chargeable with half commissions for the collector of the former district, even although such purpose has to be effected in a roundabout manner, *i. e.*, by pretending an intent to export, and then withdrawing and selling it; still, it seems that where the transaction is one of an actual change of intention, *i. e.*, first an intention to export, and then a *subsequent intention* to withdraw from exportation and to sell, such tobacco cannot be said to have been shipped from district A *to be sold* in district B.

The words of the statute determine collector A's rights by the state of the case at the time when the tobacco leaves his district. To test the question, suppose that the Commissioner had considered that the act of 1868 did *not* supersede the previous provision *for shipping tobacco directly* to be sold in another district, so that some tobacco could still have been shipped *for export*, and other tobacco *to be sold;* and suppose, further, that in such case some part of the former shipment had afterward been withdrawn and sold—could this be properly described as having been *shipped to be sold?*

If, then, it can be seen that probably, at least for a part of the tobacco shipped, (viz, that actually intended at first for exportation,) the present claimant is not entitled to commissions, it seems that, as he has not distinguished this part from the other, (if in his case there were any other,) his claim must be rejected.

S. F. PHILLIPS,
Solicitor General.

IN THE

Supreme Court United States.

THE UNITED STATES, Plaintiff in Error,

vs.

IRVING F. WILCOX, Defendant in Error.

Brief of I. G. KIMBALL, Counsel for the Defendant in Error.

Thomas McGill & Co., Printers, Washington, D. C.

Supreme Court of the United States.

No. 794. OCTOBER TERM, 1877.

THE UNITED STATES, APPELLANT.

vs.

IRVING F. WILCOX, APPELLEE.

BRIEF FOR APPELLEE.

Statement of the Case.

Irving F. Wilcox was appointed collector of internal revenue for the fifth collection district of Virginia, in April, 1869, and continued in office until March, 1871, during which time there was removed from said district, under bond, without the payment of the tax thereon, a large quantity of tobacco, upon which the internal revenue tax was subsequently paid in other districts, under the provisions of section 73 of the act of July 20, 1868. (15 Stats. at Large, page 157.) By section 24 of the act of June 30, 1864, (13 Stats. at Large, 231,) as amended by section 9 of the act of July 13, 1866, (14 Stats. at Large, page 106,) as amended by section 9 of the act of March 2, 1867, (14 Stats. at Large, page 473,) it was provided: "That in calculating the commissions of assessors and collectors of internal revenue in districts whence cotton or distilled spirits or other articles are shipped in bond to be sold in another district, one half of the amount of tax received on the quantity of cotton or spirits or other articles so shipped shall be added to the amount on which the commissions of such assessors and collectors are calculated, and a corre-

sponding amount shall be deducted from the amount on which the commissions of the assessors and collectors of the district to which such cotton or spirits or other articles are shipped are calculated." Wilcox was entitled to receive the commissions provided by section 25 of the said act of June 30, 1864, (13 Stats., 231,) as amended by section 1 of the act of March 3, 1865, (13 Stats., page 469,) upon one half of the tax paid thereon. Said section was as follows:

"SEC. 25. And be it further enacted, That there shall be allowed to collectors, in full compensation for their services and that of their deputies, a salary of fifteen hundred dollars per annum, to be paid quarterly, and, in addition thereto, a commission of three per centum upon the first hundred thousand dollars, and a commission of one per centum upon all sums above one hundred thousand dollars, and not exceeding four hundred thousand dollars, and a commission of one half of one per centum on all sums above four hundred thousand dollars and not exceeding one million of dollars, such commissions to be computed upon the amounts by them respectively collected and paid over and accounted for under the instructions of the Treasury Department."

This the accounting officers of the Treasury Department have refused to pay, and the only question involved, (except, perhaps, that of jurisdiction, although that has not been raised by the United States,) is, whether the appellee is, under the law, entitled to the ~~tax~~ commissions on one half of ~~commissions~~ the tax thus paid to other collectors, or whether the collector to whom the tax was paid is entitled to the whole of the commissions on the tobacco so shipped in bond.

ARGUMENT.

1*st. Jurisdiction.*

Had the Court of Claims jurisdiction in this case? Or is it such a case as would come within the decision made by the United States Supreme Court in the case of Nichols *v.* The United States? (7 Wall., 122.)

I answer, that the Court of Claims had jurisdiction, and it did not come within the decision in the Nichols case.

This is not a question of revenue, but one of contract. Wilcox, when he accepted the position of collector of internal revenue, contracted to perform the duties appertaining to that office, and the United States contracted to pay him the compensation provided for by law; and when he performed the services, the law fixed his pay, and there was no authority vested in any one to change that compensation.

Over questions of salary, whether paid by fixed amounts, or by commissions, the commissioner of internal revenue, nor any other officer of the Treasury Department have no jurisdiction. The accounting officers have power to settle the accounts, and not the commissioner of internal revenue; and it was the accounting officers who rejected this case.

The accounting officer of the Treasury Department, whose duty it is to adjust and settle the compensation accounts of collectors of internal revenue, and allow them the rates of compensation provided for by law, refused to obey the law and allow to Wilcox what we claim, is under the law, justly his due. The Court of Claims is the only tribunal having jurisdiction of cases of this character.

This question is very fully and ably discussed in the opinion of the Court of Claims, delivered by Richardson, Justice, in the case of Horace Boughton *v.* The United States, which was a suit by Boughton to recover money deposited with the collector of internal revenue of his district, in the way of a compromise, where the compromise was not accepted, and a *nolle prosequi* was entered in the indictments found against him, but the money was covered into the Treasury of the United States as taxes. The court says—

"The first question presented for our consideration is whether or not the court has jurisdiction of the case.

"The Assistant Attorney-General, in behalf of the defendants, relies upon Nichols et al. *vs.* The United States, (7 *Wall.*, 122,) as conclusive authority that this case belongs to a class over which this court has no jurisdiction, and the closing paragraph of the opinion delivered by the learned

judge in that case is cited to us, as it has often been before, as laying down a general rule on that subject applicable to all cases arising under the revenue laws, whatever be their nature. The learned judge said: 'Without pursuing the subject further, we are satisfied that cases arising under the revenue laws are not within the jurisdiction of the Court of Claims.'

"Broad and decided as is this language, it must be considered and construed with reference to the issues raised and the points involved in that case, which of course did not present all the questions of jurisdiction which may arise in a great variety of forms in numerous cases of entirely different character, under the revenue laws; and we think the court did not intend in that one action and by that one remark to lay down a general rule for the determination of all such questions in advance of presentation and argument.

"The claimant in that action sought to recover back money paid by him for duties on imports which he claimed were erroneously assessed. For claims of that class the statutes have provided a specific remedy, requiring the claimants, as a condition-precedent to any right of recovery, to make protest in writing before or at the time of paying the duties assessed, and authorizing them thereafter to bring actions against the collector, in the common-law courts of the United States, to determine before a jury the correctness of the assessment. (Revised Statutes, secs. 3011, 3012.) The court held that this was the sole remedy, excluding the jurisdiction of this court, and it is difficult to see how the decision could have been otherwise. Referring to the statutes, the learned judge says: "These laws constitute a system which Congress has provided for the benefit of those persons who complain of illegal assessments of taxes and illegal exactions of duties." It was with reference to the system thus provided in the revenue statutes *for the benefit of persons who complain of illegal assessment of taxes and duties*, that the closing paragraph of the opinion cited was written, rather than with reference to the whole of all the revenue laws of the United States, as a superficial reading might indicate.

"It would seem logically to follow that in all cases—whether under the revenue laws or any other laws in which Congress has provided a specific system adequate, in the opinion of the law making-power, to the investigation and recovery of legal claims of any particular class due from the Government, intrusting the determination of the rights of the parties to the judgment and discretion of specified executive or other officers, and a final enforcement to other tribunals than this court under special limitations and restrictions—such jurisdiction is exclusive, and furnishes the only remedy to claimants of that class.

"The reasons cursorily suggested by the learned judge, for the system, would not seem to require an extension of the rule as to jurisdiction beyond the classes we have mentioned. He says: "The prompt collection of the revenue, and its faithful application, is one of the most vital duties of Government. Depending, as the Government does, on its revenue to meet not only its expenses, but to pay the interest on its debt, it is of the utmost importance that it should be collected with dispatch, and that the officers of the Treasury should be able to make a reliable estimate of means in order to meet liabilities. It would be difficult to do this if the *receipts from duties and internal taxes* paid into the Treasury were liable to be taken out of it on suits prosecuted in the Court of Claims for alleged errors and mistakes, concerning which the officers charged with the collection and disbursement of the revenue *had received no information.* Such a policy would be disastrous to the finances of the country; for, as *there is no statute of limitation to bar such suits*, it would be impossible to tell in advance how much money would be required to pay the judgments obtained on them, and the result would be that *the Treasury estimates for any current year would be unreliable.*"

"Now, as to claims arising under the revenue laws, depending upon the construction of statutes or contracts, for the recovery or payment of which Congress has required no notice, demand, protest, or submission to the judgment and discretion of any revenue or other executive officer or spe-

cial judicial tribunal, there would seem to be no more reason for excluding the jurisdiction of this court over the same than over cases founded on other laws of Congress, under like conditions, of which this court has general jurisdiction. (Revised Statutes, sec. 1059.) The officers charged with the collection and disbursement of the revenue have no more information concerning the former than they have concerning the latter. The general jurisdiction of this court is expressly limited to cases commenced within six years after the claim first accrues, (Revised Statutes, sec. 1069;) and notwithstanding that at all times there are hundreds of actions pending in the common-law courts against collectors under the special system to which the rule in Nichols's case clearly refers, actions in which the judgments recovered by the plaintiffs are payable out of the public money, and the decisions of which often have important effect upon the revenues, the judgments of the Court of Claims are the only judgments for which estimates have ever been included in the book of estimates annually submitted to Congress through the Secretary of the Treasury, (Revised Statutes, sec. 3669,) or otherwise made or required.

"There are many claims which may arise under the revenue laws, founded on statute, contract, or the regulations of the Treasury Department, for the investigation, determination, or enforcement of which no special system has been prescribed by Congress, and for the recovery of which the only remedy must be in this court, under the provisions of the Revised Statutes, (sec. 1059.) There are claims for salaries by revenue officers of which this court has taken jurisdiction and given judgment against the United States in five cases. (McLean's Case, 8 C. C. R., 217; Neff's Case, 8 C. C. R., 236; Batchelor's Case, 8 C. C. R., 235; Patten's Case, 7 C. C. R., 362; and Luce's Case, 10 C. C. R., 230.) A case arose also upon the construction of section 161 of the internal revenue act of 1864, chapter 173, (13 Stat. at Large, 294,) the claimant demanding a commission of 10 per cent. on his entire purchase of stamps, to the amount of more than $500 at one time, and the defend-

ants contending that, to the extent of $500 of the amount, he was entitled to only five per cent. commission. No special remedy being provided by statute for such a case, the court took jurisdiction, and gave judgment for the claimant. (Daily's Case, 7 C. C. R., 383.)

"In all these cases the Attorney-General acquiesced in the jurisdiction and judgment of this court, and took no appeal.

"In Kaufman's Case, (11 C. C. R., 659,) the claimant brought his action here to recover upon an allowance of refund of a tax paid by an internal revenue special tax stamp returned, awarded to him by the Commissioner of Internal Revenue and certified to the First Comptroller of the Treasury for payment, in accordance with the statutes and the regulations of the department. The Comptroller refused to pass the account, and interposed objections which, if final, would thwart the action of the Commissioner, and prevent the execution of the provisions of the regulations. The Commissioner had exhausted his power and jurisdiction by awarding his allowance; and the claimant could not maintain an action against the Commissioner nor against any collector, for the money was not in their control, but was to be paid by law from the Treasury. If, then, the claimant could not enforce his allowance by action here, he was entirely without remedy; the power of the Comptroller would be superior to that of the court over a claim founded on statute, regulations, and contract certainly embraced within the language and apparently within the spirit also of the section conferring jurisdiction on this court, and to that extent the beneficent provision of law for the refund of taxes excessively assessed would be defeated, and the statute nullified." The court held that it had jurisdiction.

In the present case, neither the Commissioner of Internal Revenue, nor the Secretary of the Treasury, had any jurisdiction, or assumed any jurisdiction, to decide the compensation and salary of a collector of internal revenue. It was a case which, in the Treasury Department, was exclusively within the jurisdiction of the comptroller and accounting officers, as all other questions arising on contracts and stat-

utes are, which are not by law to be determined by some other officer. And it was the accounting officer, and no other officer, who did, in fact and in law, pass upon the question of the collector's compensation in this case.

Neither the Secretary of the Treasury, nor the Commissioner of Internal Revenue, had any jurisdiction to decide as to the compensation or salary of a collector of internal revenue. It was a case which, in the Treasury Department, was exclusively a matter of accounts, and clearly comes within the second point made by the Chief Justice of the Court of Claims, in the opinion in the case of George W. Campbell *et al. v.* The United States.

It is a case "where the law declares that, upon a party's doing some defined act, he shall be entitled to money from the Government, and his right thereto is not made to depend upon the decision or action of some executive officer, but is complete upon the doing of the act, the claim for the money may be sued upon in this court."

In the Nichols case, (7 Wall., 122,) the whole reasoning of the court shows that it was not contemplated to deny the jurisdiction of the Court of Claims in a case of this kind, where the revenues of the Government were not in question, and where there was no remedy in any other court.

Further, the present case is clearly not one of revenue; for, although the rate of compensation is fixed by a section of the internal revenue law, the money necessary to pay the compensation due to collectors, and out of which the claim ought to have been paid, is appropriated annually in the regular appropriation bills passed by Congress, to be paid out of the Treasury as are all other amounts appropriated by Congress.

2*d*. *Is the appellee entitled under the law?*

The only other question involved in this case is the following, viz: Is the appellee entitled to commissions on one half of the tax collected on the tobacco transported from this district under the provisions of section 73 of the act of

July 20, 1868, (15 Stats., 157,) or is the collector to whom the tax was paid entitled to the whole of the commission?

Congress, by a very carefully-drawn act, (act of July 13, 1866,) remodeled the whole system of internal revenue taxation; and by section 90 of the act of June 30, 1864, as amended by section 9 of the act of July 13, 1866, (14 Stats., 125, middle of page,) provided that "manufactured tobacco * * * may be transferred without payment of the tax to a bonded warehouse established in conformity with law and treasury regulations, under such rules and regulations and upon the execution of such transportation bonds or other security as may be prescribed by the Commissioner of Internal Revenue, * * * and may be withdrawn from bonded warehouse for consumption on payment of the tax, or removed for export to a foreign country without payment of tax." This provision remained unchanged in any particular until the passage of the act of July 20, 1868. Sections 73 and 74, (15 Stats., 157,) and the changes made by said sections of the last-named act were mostly mere matters of details, with perhaps one exception, viz., each package that was sent to the bonded warehouse was required to have affixed to it an engraved stamp, "to be provided and furnished to the several collectors, as in the case of other stamps, and to be charged to them and to be accounted for in the same manner." To learn the object that Congress had in view, in requiring this stamp to be affixed, it will be necessary to examine further in relation to this act of July 20, 1868, and the history of its passage.

This act treated of but two subjects—the taxation of distilled spirits and tobacco—and entirely changed the mode of the payment of tax thereon. Under previous laws, all taxes on these two manufactures had been paid, after assessment of the amounts due, by the assessor, to the collector, and the only proof of such payment required by the law to be attached to the package was furnished by brands easily counterfeited, so that experience showed that a very large proportion of the tobacco and distilled spirits upon the market had false marks and brands. Congress, by this act of

July 20, 1868, entirely changed the mode of payment, and required that every package should have attached to it an engraved stamp. (Sec. 67, 15 Stats., 155.) Section 70 of the same act (15 Stats., 156) forfeited all tobacco found without the proper stamp. If tobacco shipped in bond had been allowed to be sent without any stamp, it would have kept open the doors for frauds which Congress was attempting to close, as the manufacturer could make more than one shipment under the same entry, and there would be no means for detection ; but, under the law, every package, whether it ultimately paid tax or was exported, was required to have an engraved stamp, only to be procured of the collector, who received it of the Treasury Department, and thus, as every stamp was numbered, it was impossible to cheat, and the revenue officers were able to trace every package to its destination.

Having this object in view, and having devised a complete check on fraudulent transportation of tobacco, did Congress intend to compel shippers to export their tobacco, or to allow them to pay the tax in the district to which the tobacco was shipped, and thus increase the receipts from this source?

In its effect, the language employed in section 90 of the act of June 30, 1864, as amended, quoted before, that tobacco thus shipped "may be withdrawn from bonded warehouse for consumption on payment of the tax, or removed for export to a foreign country without payment of tax," is identical with that used in section 73 of the act of July 20, 1868. "No manufactured tobacco or snuff shall be withdrawn or removed from any bonded warehouse without an order or permit from the collector in charge of exports at such port, which shall be issued only for the immediate transfer to a vessel * * or after the tax has been paid thereon," and the object of Congress in both cases was the same, viz., to allow the shipper to either pay the tax or export the tobacco, as he might wish. The Commissioner of Internal Revenue so understood it, for under both acts he issued his regulations as required by law, by which he

prescribed the forms necessary to be used in the withdrawal of the tobacco from bond and the payment of the tax thereon.

That some method should be provided by which tobacco manufacturers could ship their tobacco to market without the prepayment of the tax thereon was absolutely indispensable, as the tax was a large proportion of the cost of placing it on the market, and the capital required to pay for the stamps, if no such method was provided, would have driven all excepting manufacturers of very large means from the business, and this method was provided by section 73 of the act of July 20, 1868, and for this very purpose.

When, before the passage of section 9, act of July 13, 1866, (14 Stats., 106,) amending section 24, act June 30, 1864, (13 Stats., 231,) a collector was so unfortunate as to have a district from which most of the manufactures and products were shipped in bond to other districts, he received no part of the commissions on the tax collected therefrom, notwithstanding the fact that most of the work, care, and responsibility devolved upon him ; but this was changed by said act, which added to said section the following words, to wit: "That in calculating the commissions of assessors and collectors of internal revenue in districts whence cotton or distilled spirits are shipped in bond to be sold in another district, one half the amount of tax received on the quantity of cotton or spirits so shipped shall be added to the amount on which the commissions of such assessors and collectors are calculated." This was further amended by the act of March 2, 1867, sec. 9, (14 Stats., 473,) by adding after the words "cotton or distilled spirits," wherever they occur, the words, "or other articles," thus including tobacco amongst the articles upon which the shipping collector was to receive the commissions provided by section 25, act June 30, 1864, (13 Stats., 231,) —as amended by section 1, act March 3, 1865, (13 Stats., 469,) thus providing by the act of July 13, 1866, both a mode of taxing tobacco and of shipping of the same under bond,

and also providing for the compensation due to the collector upon tobacco thus shipped. Section 24 of the act of June 30, 1864, as thus amended, was never repealed, and is incorporated into section 3145 of the Revised Statutes. If not repealed, has it become inoperative so that the appellee is not now entitled to commissions on one half of the amount received on the tobacco shipped in bond from his district?

I answer, that it was not repealed.

First, because Congress had no such intention, and in the construction of statutes the intention of the legislature must be followed. The whole object of Congress in passing the act of July 20th, 1868, was to secure to the United States the tax due on distilled spirits and tobacco. They had no intention of making any change whatever in the compensation of the collector, and do not, in the whole act, touch in any way, that subject, but allowed it to remain as then provided by law.

Second. It cannot be said to have become inoperative on account of the words, "To be sold in another district," used in said 24th section as amended, as claimed by the Assistant Attorney-General in the argument in the court below, where it was claimed that no one could ship tobacco in bond, under sections 73 and 74 of the act of July 20, 1868, without having the intention of exporting it, and that to entitle the shipping collector to commissions on one half, the intention must have been to sell it: as the language is "to be sold." I think I have clearly answered this objection in the former part of my argument. Congress did not intend to change the privilege of the shipper to pay the tax, and the intention of the shipper to pay the tax in another district must be inferred from the fact that he does pay it; and as intention is an act of the mind, it can only be inferred from what is subsequently done. A careful examination of the first paragraph of section 74, act of July 20, 1868, (15 Stats., 157,) will show that the manufacturer could ship any tobacco to an export bonded warehouse—the language used being, "That manufactured tobacco and snuff may be removed in bond from the manufactory without payment of

the tax, to be transported directly to an export bonded warehouse for the storage of manufactured tobacco or snuff, established at a port of entry, as hereinbefore provided."

If by the act of July 20, 1868, Congress had intended that the shipping collector should not be allowed commission on one half the tax collected on tobacco thus shipped, they would have said so, and not have allowed the law granting the commissions to remain on the statute-book unrepealed.

I cannot close the argument on this point better than by quoting from the opinion rendered in this case in the court below: "In our opinion, the Fortieth Congress, in passing the act of 1868, (chap. 186,) had no such intention, and expressed no such will; and to adopt the construction contended for by the defendants, (the appellants,) would be to defeat the clearly established policy of Congress in this particular, by giving substantial force to language not material to the subject-matter legislated upon, and by establishing an incidental and accidental change of the law beyond the contemplation of the legislators."

I. G. KIMBALL,
Counsel for Appellee.